LIBRARY
SUPREME COURT, U. S.

Nos. 1048

Office-Supreme Court, U.S.
FILED
FEB 14 1969
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

ILLINOIS CENTRAL RAILROAD COMPANY, ET AL., *Appellants*,
v.
CITY OF CHICAGO, ET AL., *Appellees*.
No.

ALLIED MILLS, INC., ET AL., *Appellants*,
v.
CITY OF CHICAGO, ET AL., *Appellees*.
No.

NEW ORLEANS TRAFFIC AND TRANSPORTATION BUREAU, *Appellants*,
v.
CITY OF CHICAGO, ET AL., *Appellees*.
No.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

JURISDICTIONAL STATEMENT

JOHN W. ADAMS
104 St. Francis Street
Mobile, Alabama 36602

WILLIAM J. O'BRIEN, JR.
JOHN H. DOERINGER
135 E. Eleventh Place
Chicago, Illinois 60605

JAMES H. DURKIN
646 Chicago Road
Chicago Heights, Illinois 60411

CARL B. STERZING, JR.
8 N. Jefferson Street
Roanoke, Virginia 24011
Attorneys for Appellants Illinois Central Railroad Company, et al.

FRANKLIN C. GAGEN
110 North Wacker Drive
Chicago, Illinois 60606

BRYCE L. HAMILTON
1400 First National Bank Bldg.
Chicago, Illinois 60603
Attorneys for Appellants Allied Mills, Inc., et al.

LOUIS A. SCHWARTZ
2926 International Trade Mart
No. 2 Canal Street
New Orleans, Louisiana 70130
Attorney for Appellant New Orleans

INDEX

	PAGE
Opinions Below	2
Jurisdiction	2
Statutes Involved	2
Questions Presented	3
Statement:	
1. Proceedings Before the Commission	3
2. Proceedings in the District Court	7
The Questions Presented are Substantial	9
Conclusion	13
Appendix—Statutes Involved	1a

CITATIONS

Cases:

Alabama G.S.R. Co. v. United States, 340 U.S. 216	10
Board of Trade of the City of Chicago v. Illinois Central R. Co., 325 I.C.C. 412, 329 I.C.C. 529	3, 4
Board of Trade v. United States, 314 U. S. 534	12
Chicago & N.W. R. Co. v. Atchison, T. & S.F. R. Co., 387 U. S. 326	2, 11
I.C.C. v. Inland Waterways Corp., 319 U. S. 671	10
I.C.C. v. New York, N.H. & H. R. Co., 372 U. S. 744	2
I.C.C. v. Union Pacific R. Co., 222 U. S. 541	12
Louisville & N. R. Co. v. United States, 238 U. S. 1	9
Manufacturers Ry. Co v. United States, 246 U. S. 457	12
Minneapolis & St. Louis Ry. Co. v. United States, 361 U. S. 173	10, 11
New York v. United States, 331 U. S. 284	12
Pennsylvania Co. v. United States, 236 U. S. 351	12

PAGE

Swift & Co. v. United States, 343 U. S. 373 ..... 9, 12

Texas & Pacific Ry. Co. v. United States, 289 U. S. 627 .. 10

Virginian Ry Co. v. United States, 272 U.S. 658 12

Western Chemical Co. v. United States, 271 U. S. 268 .. 12

Statutes:

Government Organization and Employees Act:

Secs. 701-706, 5 U.S.C. §§ 701-706 2

Sec. 556(d), 5 U.S.C. § 556(d) 2, 9

Sec. 557(c), 5 U.S.C. § 557(c) 2

Interstate Commerce Act:

Sec. 1(5), 49 U.S.C. § 1(5) 2, 4, 6, 8

Sec. 3(1), 49 U.S.C. § 3(1) 2, 4, 6, 8

Sec. 3(1a), 49 U.S.C. § 3(1a) 4, 6

Judicial Code:

28 U.S.C. § 1253 2

28 U.S.C. § 1336 2

28 U.S.C. § 1398 2

28 U.S.C. § 2101(b) 2

28 U.S.C. § 2284 2

28 U.S.C. §§ 2321-2325 2

IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

Nos.

ILLINOIS CENTRAL RAILROAD COMPANY, ET AL., *Appellants*,
v.
CITY OF CHICAGO, ET AL., *Appellees*. } No.

ALLIED MILLS, INC., ET AL., *Appellants*,
v.
CITY OF CHICAGO, ET AL., *Appellees*. } No.

NEW ORLEANS TRAFFIC AND TRANSPORTATION BUREAU, *Appellants*,
v.
CITY OF CHICAGO, ET AL., *Appellees*. } No.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

JURISDICTIONAL STATEMENT

Appellants, Illinois Central Railroad Company, et al.,[1] Allied Mills, Inc., et al.,[2] and New Orleans Traffic and Transportation Bureau have appealed from a judgment of the United States District Court for the Northern District of Illinois, Eastern Division, which set aside orders of the Interstate Commerce Commission (the Commission), and submit this Jurisdictional Statement to show that the Supreme Court of the United States has jurisdiction of the appeals and that substantial questions are presented.

---

[1] Illinois Central Railroad Company, Chicago & Eastern Railroad Company, Gulf Mobile and Ohio Railroad Company, and Norfolk and Western Railway Company.

[2] Allied Mills, Inc., Central Soya Co., Inc., Lauhoff Grain Company, and Ralston Purina Company.

OPINIONS BELOW

The opinion of the District Court is reported at 291 F. Supp. 858. The initial report of the Commission, by Division 2, is reported at 325 I.C.C. 412, and the report of the full Commission on reconsideration is reported at 329 I.C.C. 529. The opinion and judgment of the District Court and the reports and orders of the Commission are reproduced in the appendices to the jurisdictional statement filed in the appeal from the judgment of the District Court taken by the City of Chicago and the Board of Trade of the City of Chicago.[3]

JURISDICTION

This action was brought under 28 U.S.C. §§ 1336, 1398, 2284 and 2321-2325 and 5 U.S.C. § 1009 (now §§ 701-706) to set aside orders of the Commission in a proceeding arising on complaint. The final judgment of the three-judge District Court was dated and entered on July 25, 1968. Timely motions for new trial and amended findings and conclusions were denied by the District Court on October 21, 1968. The notices of appeal were filed in the District Court on December 19 and 20, 1968.

The jurisdiction of the Supreme Court to review the judgment of the District Court by direct appeal is conferred by 28 U.S.C. §§ 1253 and 2101(b). *I.C.C.* v. *New York, N.H. & H.R. Co.*, 372 U.S. 744 (1963); *Chicago & N.W. R. Co.* v. *Atchison, T. & S.F. R. Co.* 387 U.S. 326 (1967).

STATUTES INVOLVED

The statutes involved are §§ 1(5) and 3(1) of the Interstate Commerce Act (49 U.S.C. §§ 1(5) and 3(1)) and §§ 556(d), 557(c) and 706 of the Government Organization and Employees Act (5 U.S.C. §§ 556(d), 557(c) and 706), which are set forth in the Appendix hereto.

---

[3] This jurisdictional statement was filed in *City of Chicago, et al.* v. *United States, et al.*, No. 1047, October Term, 1968, and is hereinafter cited as "Chicago J.S."

QUESTIONS PRESENTED

The questions presented by these appeals arise out of the opinion and judgment of the District Court, which set aside orders entered by the Commission on a complaint respecting rail rates on soybeans, in carloads, from points in Illinois to Chicago, Illinois, for export, and remanded the cause to the Commission for further proceedings consistent with the opinion of the Court. The Commission found that the assailed rates had not been shown to be unjust or unreasonable or in contravention of the policy of Congress with regard to export rates on farm commodities, but that some of them were unduly preferential and prejudicial. The orders of the Commission required the defendant rail carriers to remove the undue preference and prejudice, but did not prescribe any new rates.

The questions presented are:

1. Whether the District Court erred in treating the orders of the Commission under review as having prescribed or approved freight rates.

2. Whether the District Court erred in holding that the Commission failed to make adequate findings in support of its conclusions.

3. Whether the District Court erred in remanding the cause to the Commission for further proceedings with directions to consider various economic and trade factors in passing upon the lawfulness of the assailed rates, including factors as to which neither the complainant nor any other party before the Commission had introduced evidence.

STATEMENT

1. Proceedings Before the Commission

This case involves the validity of reports and orders entered by the Commission in *Board of Trade of the City of Chicago* v. *Illinois Central R. Co.*, 325 I.C.C. 412 (1965),

329 I.C.C. 529 (1967), on a complaint of the Board of Trade of the City of Chicago against four railroads.[4] The complaint before the Commission alleged that the rates of the railroads on soybeans, in carloads, from points of origin in Illinois to Chicago, when for export, were unjust and unreasonable in violation of § 1(5) of the Interstate Commerce Act (49 U.S.C. § 1(5)); unduly prejudicial to the port of Chicago and unduly preferential of ports on the Gulf of Mexico in violation of § 3(1) of the Interstate Commerce Act (49 U.S.C. § 3(1)); and in violation of the policy of Congress with regard to export rates on farm commodities set forth in § 3(1a) of the Interstate Commerce Act (49 U.S.C. § 3(1a)). (Chicago J.S. C-1—C-2.) The Department of the Port of Chicago was an intervener in support of the complaint. Appellants Allied Mills, Inc., et al. and other processors of soybeans in Central Illinois and appellant New Orleans Traffic and Transportation Bureau were interveners in support of the position of the defendant railroads that the assailed rates to Chicago were not unlawful. (Chicago J.S. C-2.)

The export rates on soybeans from Northern and Central Illinois origins to Chicago were generally lower than the corresponding export rates on soybeans to Gulf ports; but from Southern Illinois origins the export rates on soybeans to Chicago were generally higher than the corresponding export rates on soybeans from that area to the Gulf ports. (Chicago J.S. C-3) The complainant sought rates to Chicago which were substantially lower than the existing rates. (Chicago J.S. C-2, C-17, C-25.)

The Commission in both reports found that the assailed rates "have not been shown" to be unjust or unreasonable or in contravention of the Congressional policy on export

[4] Illinois Central Railroad Company, Gulf Mobile and Ohio Railroad Company, Wabash Railroad Company, and Chicago & Eastern Railroad Company. (Chicago J.S. C-2.) Appellant Norfolk and Western Railway Company is successor in interest to Wabash Railway Company.

rates. (Chicago J.S. C-14, D-12.) On the issue of undue preference and prejudice, the Commission in both reports found that the assailed export rates to Chicago which were higher than the corresponding export rates from the same origins to the Gulf ports were unduly preferential of the Gulf ports and unduly prejudicial to Chicago, but that in all other respects the assailed rates "have not been shown" to be unduly preferential or prejudicial. (Chicago J.S. C-14, D-12.) This finding meant that the assailed rates from Southern Illinois to Chicago were unduly prejudicial to Chicago and unduly preferential of the Gulf ports to the extent they exceeded the corresponding rates from Southern Illinois to the Gulf ports, and that the rates from Northern and Central Illinois to Chicago had not been shown to be unduly preferential or prejudicial.

The Commission did not prescribe any new rates from Southern Illinois to Chicago, but left the method of removing the undue preference and prejudice to the defendant rail carriers. The orders required the carriers "to cease and desist from practicing the undue preference and prejudice found to exist," and "to establish . . . maintain and apply rates which will prevent and avoid the undue preference and prejudice found herein to exist." (Chicago J.S. C-14, D-14.) The carriers elected to remove the preference and prejudice found undue by lowering the rates from Southern Illinois to Chicago to match the corresponding rates from Southern Illinois to the Gulf ports. (See Brief for Plaintiffs in District Court dated Sept. 1, 1967, p. 5.)

The Commission in its reports set forth the basic economic facts and made findings which support its conclusion that, except to a limited extent, since corrected, the rates under attack "have not been shown" to be unlawful.[5] The

[5] The findings of the hearing examiner set forth in the appendix to the initial report (Chicago J.S. C-15—C-26.) were adopted by Division 2 of the Commission (Chicago J.S. C-7); and the findings of Division 2 were, in turn, adopted by the full Commission. (Chicago J.S. D-3, D-9, D-12.)

economic facts, discussion and findings take up approximately 23 pages of the reports. (Chicago J.S. C-3—C-26, D-3—D-12.) The findings with respect to the issue of whether the assailed rates were contrary to the Congressional policy with respect to export rates on farm commodities require no consideration, because the plaintiffs advised the District Court that the issue under § 3(1a) of the Interstate Commerce Act was "no longer involved."[6]

On the issue of justness and reasonableness under § 1(5) of the Interstate Commerce Act, the Commission found that to a large extent the assailed export rates to Chicago reflected the basic level of the rates on grain prescribed by the Commission in 1936 plus the general increases subsequently authorized by the Commission, and that from other Illinois origins the carriers had published lower rates to Chicago to meet truck and barge competition. (Chicago J.S. C-16.) The complainant's case was predicated largely on rate comparisons. These were analyzed by the Commission, and it concluded that they failed to demonstrate that the rates under attack were unjust or unreasonable. (Chicago J.S. C-6—C-7, C-17—C-19, D-8—D-9.)

The reports of the Commission contain extensive discussion and findings relating to the claim of undue preference and prejudice under § 3(1) of the Interstate Commerce Act. These relate to comparisons of the assailed export rates to Chicago with the export rates to the Gulf ports; comparisons of the assailed rates with those sought by the complainant; the volume of soybean traffic to Chicago and the Gulf ports; the competitive situation in the transportation and marketing of soybeans; the shortage of soybeans in Central Illinois, where many of the processing plants are located; and the rate advantage which Chicago would have over the Gulf ports if the Commission were to prescribe

[6] In note 1 on page 2 of their brief in the District Court dated Sept. 1, 1967, plaintiffs stated: "The complaint also alleged a violation of section 3(1a), but this issue is no longer involved."

the reduced rates sought by the complainant. (Chicago J.S. C-7—C-14, C-25—C-26, D-9—D-12.) The Commission concluded that the complainant had failed to show any undue preference of the Gulf ports or undue prejudice to Chicago except in the rates from Southern Illinois. (Chicago J.S. C-12—C-14, D-10—D-12.)

Significant findings made by the Commission in its report on reconsideration include the following:

> "... the level of the rates [on soybeans for export] sought by the complainant could have adverse effects upon processors in central Illinois. It appears that the possibility exists of creating a preferential situation in treating the one of which complaint is made. . . . Under the sought rates, the export of soybeans would obviously be favored. . . . Chicago . . . is not only not disadvantaged, except as to rates from southern Illinois origins, but under the sought basis would receive an additional advantage over the Gulf ports which would tend to impede the free flow of traffic as between the ports here involved. . . . the record herein establishes not only a general rate advantage but also a generally adequate supply of soybeans for storage and for export at Chicago. . . . Chicago dominates the soybean traffic due to its geographical advantage of proximity to the producing area and presently lower rates. . . . the port of Chicago is only entitled to rates which are no higher than those to the Gulf ports. . . . (Chicago J.S. D-9—D-12.; paragraphs not indicated.)

2. Proceedings in the District Court

The original complaint filed in the District Court on March 22, 1966, was directed to the initial report and order of the Commission by Division 2. An amended complaint directed to both orders and reports of the Commission was filed on April 28, 1967.

The plaintiffs were the City of Chicago, an intervener in support of the complaint before the Commission, and the Board of Trade of the City of Chicago, the complainant before the Commission. The defendants were the United

States and the Commission. The intervening defendants in the District Court were: appellants Illinois Central Railroad Company, et al, the defendants before the Commission; appellants Allied Mills, Inc., et al, and other processors of soybeans with plants located in Central Illinois, interveners before the Commission; and appellant New Orleans Traffic and Transportation Bureau, an intervener before the Commission.

The plaintiffs argued to the District Court that the Commission had failed to make adequate findings to justify its conclusions and had misconstrued §§ 1(5) and 3(1) of the Interstate Commerce Act. These contentions were disputed in the arguments of the Commission and the intervening defendants. The United States in its answer stated that it neither supported nor opposed the orders of the Commission.

The opinion of the District Court was entered on July 25, 1968. (Chicago J.S. A-1, B-1.) The issues of statutory construction were not passed upon by the Court, but it held that the findings made by the Commission were inadequate. (Chicago J.S. A-11.) Statements throughout the opinion indicate that the Court considered the reports and orders of the Commission as having prescribed or approved rates rather than as having found that the assailed rates had not been shown to be unlawful, except from Southern Illinois. (Chicago J.S. A-4—A-8, A-10—A-11.)[7] Various statements made in the opinion indicate that the Court was also of the view that the Commission was required to consider various economic and trade factors as to which there was no evidence in the record before the Commission. (Chicago J.S. A-7—A-8, A-10.)

The judgment of the District Court, entered concurrently with its opinion, set aside the Commission's orders and

[7] The District Court's opinion refers to the rates as having been "fixed," "assigned," or "approved" by the Commission, and as having been found by it to be "just and reasonable" or "not unduly preferential or prejudicial."

remanded the cause for further administrative proceedings consistent with the Court's opinion. (Chicago J.S. B-1.) Motions for new trial and amended findings and conclusions filed by plaintiffs and by all of the intervening defendants were denied by the District Court on October 21, 1968, and its judgment thereupon became final. Notices of appeal from the judgment were filed by plaintiffs and by these appellants on December 19 and 20, 1968.

THE QUESTIONS PRESENTED ARE SUBSTANTIAL

These appeals raise important questions in the administration of the Interstate Commerce Act and the judicial review of orders of the Commission denying relief on the ground that the complainant had failed to make a case.

1. The District Court erred in approaching the issues before it on the wholly erroneous premise that the Commission had somehow prescribed or approved rates on soybeans from Illinois origins to Chicago for export, and therefore was required to make findings which would support an affirmative prescription of rates. This indicates that the Court misconstrued the nature and effect of the Commission's orders.

The proceeding before the Commission arose on the complaint of the Board of Trade, which, as the complaining party, had the burden of proving that the assailed rates to Chicago were in violation of the Interstate Commerce Act. *Louisville & N. R. Co.* v. *United States,* 238 U.S. 1, 11 (1915); *Swift & Co.* v. *United States,* 343 U.S. 373, 382, 385 (1952); 5 U.S.C. § 556(d). The Commission found that the complainant had failed to sustain this burden, except in the case of the rates from Southern Illinois to Chicago, which were found unduly preferential of the Gulf ports and unduly prejudicial to Chicago to the extent they exceeded the corresponding rates to the Gulf ports. The finding of the Commission that the rates under attack had not been shown to be unjust or unreasonable and its finding that the rates had not been shown to be unduly preferential

or prejudicial except from Southern Illinois did not constitute a prescription or an approval of the rates. *I.C.C.* v. *Inland Waterways Corp.*, 319 U.S. 671, 686 (1943).

The orders entered by the Commission did not prescribe or approve any existing rates or any new rates from any of the Illinois origin points to Chicago or the Gulf ports. The only command found in the orders (see p. 5, *supra*) was that the carriers remove the undue preference and prejudice found to exist in the rates from Southern Illinois to Chicago; and the carriers thus had the *option* of removing such preference and prejudice "by raising one rate, lowering the other, or altering both." *Texas & Pacific Ry. Co.* v. *United States*, 289 U.S. 627, 650 (1933). The carriers elected to comply with the orders by lowering the rates from Southern Illinois to Chicago (see p. 5, *supra*), and the measure of the rates published was thus determined by the carriers and not by the Commission. *I.C.C.* v. *Inland Waterways Corp.*, 319 U.S. 671, 686-687 (1943).

2. The holding of the District Court that the findings of the Commission were inadequate is plainly erroneous. These findings reflect the judgment of the Commission, on the record before it, that no affirmative prescription of new rates had been justified, and that the only relief warranted was an order directing the removal of undue preference and prejudice in the export rates from Southern Illinois to Chicago.

In its reports, the Commission explained why it was of the opinion that the complainant had failed to show that any of the rates under attack were unjust or unreasonable, or that any of such rates, except those from Southern Illinois, were unduly preferential or prejudicial. The Commission thus made the essential findings which constituted the basis for its refusal to grant the prescription of new rates sought by the complainant. No more was required. *Alabama G.S.R. Co.* v. *United States*, 340 U.S. 216, 227-228 (1951); *Minneapolis & St. Louis Ry. Co.* v. *United States*,

361 U.S. 173, 192-194 (1959); *Chicago & N.W. R. Co. v. Atchison, T. & S. F. R. Co.*, 387 U.S. 326, 358 (1967). In a memorandum[8] filed in the District Court, plaintiffs admitted that "There is no problem here knowing what the basis of the Commission's action was."

A different question would be presented if the Commission had prescribed or approved new rates. The Commission was not required to make findings in support of orders it did not enter.

3. The District Court further erred in setting forth in its opinion various economic and trade factors for consideration by the Commission in passing upon the lawfulness of the assailed rail rates. The factors enumerated are: the ultimate destinations of the export shipments of soybeans, the ocean shipping rates on soybeans, the quantities of soybeans shipped from the various points of origin, the terminal costs at the ports, other cost elements involved in the sale and transportation of soybeans, soybean meal, and soybean oil, and the profit margins of soybean processors in Central Illinois. These factors were variously described as "relevant," "necessary to complete the competitive picture," "necessarily involved," and "pertinent." (Chicago J.S. A-7, A-10.) The Court recognized the fact that there was no evidence in the record concerning these factors[9] (Chicago J.S. A-7), but it nevertheless remanded the cause to the Commission for further proceedings consistent with the Court's opinion.

Even if it be assumed that all of the enumerated factors were relevant and material to the issues before the Commission (which we deny is the case), the Commission was not required to supply a deficiency in the record. The

[8] Memorandum in Support of Plaintiffs' Motion for Amended and Additional Findings or for New Trial dated August 15, 1968, p. 5.

[9] There was evidence of the quantities of soybeans shipped to Chicago and the Gulf ports, but this did not show quantities from individual points of origin. (Chicago J.S. C-4, C-13, C-26.)

proper practice is that followed in *Swift & Co.* v. *United States,* 343 U.S. 373 (1952), which involved an order of the Commission dismissing a complaint charging that rates were unreasonable and unduly preferential and prejudicial. The Court held that the complainant had failed to sustain its burden of proof on both issues, and upheld the order without directing a remand of the cause for further administrative proceedings.

Although the District Court, near the end of its opinion, recognized that the economic and trade factors under discussion might present administrative questions (Chicago J. S. A-10), the fact remains that the earlier statements in the Court's opinion impose a mandate upon the Commission to consider and give weight to the factors enumerated. This is inconsistent with the rule that, absent an error of law, determinations as to whether freight rates are just and reasonable and free from undue preference and prejudice are factual questions for the expert judgment and discretion of the Commission. *I.C.C.* v. *Union Pacific R. Co.,* 222 U.S. 541, 547-548, 550 (1912); *Pennsylvania Co.* v. *United States,* 236 U.S. 351, 361 (1915); *Manufacturers Ry. Co.* v. *United States,* 246 U.S. 457, 481 (1918); *Western Chemical Co.* v. *United States,* 271 U.S. 268, 271 (1926); *Virginian Ry. Co.* v. *United States,* 272 U.S. 658, 665 (1926); *Board of Trade* v. *United States,* 314 U.S. 534, 546 (1942); *New York* v. *United States,* 331 U.S. 284, 326, 332, 347 (1947).

The District Court erred in remanding the cause with directions which invade the province of the Commission and which would require the Commission to gather evidence that the parties before it did not see fit to introduce.

CONCLUSION

For the foregoing reasons, probable jurisdiction of this appeal should be noted, and the case should be set for full hearing on the merits.

Respectfully submitted,

JOHN W. ADAMS
104 St. Francis Street
Mobile, Alabama 36602

WILLIAM J. O'BRIEN, JR.
JOHN H. DOERINGER
135 E. Eleventh Place
Chicago, Illinois 60605

JAMES H. DURKIN
646 Chicago Road
Chicago Heights, Illinois 60411

CARL B. STERZING, JR.
8 N. Jefferson Street
Roanoke, Virginia 24011
Attorneys for Appellants Illinois Central Railroad Company, et al.

FRANKLIN C. GAGEN
110 North Wacker Drive
Chicago, Illinois 60606

BRYCE L. HAMILTON
1400 First National Bank Bldg.
Chicago, Illinois 60603
Attorneys for Appellants Allied Mills, Inc., et al.

LOUIS A. SCHWARTZ
2926 International Trade Mart
No. 2 Canal Street
New Orleans, Louisiana 70130
Attorney for Appellant New Orleans Traffic and Transportation Bureau

Of Counsel:
WINSTON, STRAWN, SMITH & PATTERSON
1400 First National Bank Bldg.
Chicago, Illinois 60603

APPENDIX

Statutes Involved

Section 1(5) of the Interstate Commerce Act, 49 U.S.C. § 1(5), provides:

> "All charges made for any service rendered or to be rendered in the transportation of passengers or property as aforesaid, or in connection therewith, shall be just and reasonable, and every unjust and unreasonable charge for such service or any part thereof is prohibited and declared to be unlawful."

Section 3(1) of the Interstate Commerce Act, 49 U.S.C. § 3(1), provides:

> "It shall be unlawful for any common carrier subject to the provisions of this chapter to make, give, or cause any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, association, locality, port, port district, gateway, transit point, region, district, territory, or any particular description of traffic, in any respect whatsoever; or to subject any particular person, company, firm, corporation, association, locality, port, port district, gateway, transit point, region, district, territory, or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever: *Provided, however,* That this paragraph shall not be construed to apply to discrimination, prejudice, or disadvantage to the traffic of any other carrier of whatever description."

Section 556(d) of the Government Organization and Employees Act (formerly § 7(c) of the Administrative Procedure Act), 5 U.S.C. § 556(d) provides in pertinent part:

> "Except as otherwise provided by statute, the proponent of a rule or order has the burden of proof."

Section 557(c) of the Government Organization and Employees Act (formerly § 8(b) of the Administrative Procedure Act), 5 U.S.C. § 557(c), provides in pertinent part:

"The record shall show the ruling on each finding, conclusion, or exception presented. All decisions, including initial, recommended, and tentative decisions, are a part of the record and shall include a statement of —

(A) findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on the record; and

(B) the appropriate rule, order, sanction, relief, or denial thereof."

Section 706 of the Government Organization and Employees Act (formerly § 10(e) of the Administrative Procedure Act), 5 U.S.C. § 706, provides:

"To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall —

(1) compel agency action unlawfully withheld or unreasonably delayed; and

(2) hold unlawful and set aside agency action, findings, and conclusions found to be —

(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(B) contrary to constitutional right, power, privilege, or immunity;

(C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;

(D) without observance of procedure required by law;

(E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or

(F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error."